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U.S. Citizenship
and Immigration
Services

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MAR 23 2004

FILE: [REDACTED] Office: PORTLAND, OR

Date:

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Portland, Oregon. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed, and the April 8, 2003 AAO Order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Mexico who made a material and willful misrepresentation at the time of his last entry into the United States. The record reflects that the applicant falsely claimed birth in the United States at the San Diego port of entry on August 29, 1986. As a result, the applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(1). The applicant is married to a naturalized U.S. citizen and is the beneficiary of an approved petition for alien relative. He seeks a waiver of the ground of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that based on the evidence in record, the applicant had failed to establish that his wife would suffer extreme hardship if he were removed to Mexico.

On appeal, the applicant, through an accredited representative, asserted that the district director ignored and distorted pertinent facts and issues in his case, and that his case should have been analyzed according to immigration law as it existed in 1986. The applicant additionally asserted that the district director violated his due process rights by not asking for more evidence regarding hardship. The applicant asserted that his wife worked as a teacher's assistant for nine years, that she was attending Community College to better her life, that she would not be able to attend school if she moved to Mexico, and that she would likely be unemployed due to the poor economy in Mexico. The applicant asserted further that his wife and family would lose their house and future opportunities if they moved to Mexico.

In a decision dated, April 8, 2003, the AAO found that the applicant had failed to demonstrate that his wife would suffer hardship over and above the normal economic and social disruptions involved in the removal of a family member, and denied the appeal accordingly.

In a Motion to Reconsider, dated April 8, 2003, counsel asserts that the applicant's case is factually distinguishable from the Board of Immigration Appeals (Board) case, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (1999), and that the AAO misapplied legal precedent when applying factors set forth in *Cervantes-Gonzalez*, to the present case. Counsel also reasserts that pertinent facts and issues were ignored and dismissed in the applicant's case and that the AAO failed to consider in the aggregate, the hardship factors set forth in the applicant's case. Specifically, counsel asserts that the AAO dismissed the fact that the applicant earns significantly more than his wife's yearly income of \$15,719.00, and that the applicant and his wife are in the process of buying a new home. Counsel additionally asserts that the AAO diminished the economic and social hardship that the applicant's wife would suffer if she returned to Mexico after living in the U.S. for numerous years and becoming a U.S. citizen and part of her community. Counsel reasserts further that the AAO erred in not applying 1986 immigration law on waivers for misrepresentation to the applicant's case.

8 C.F.R. § 103.5(a) states in pertinent part:

- (a) Motions to reopen or reconsider

....

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed

The AAO finds counsel's reassertion that the applicant's case should be adjudicated according to immigration law as it existed in 1986 to be unpersuasive. The AAO notes that this issue was thoroughly addressed in the previous April 8, 2003 AAO decision, and that counsel provides no new evidence or legal precedent to substantiate his assertions. Moreover, the AAO notes that the Board clearly held in *Matter of Cervantes-Gonzalez*, supra, that the new provisions of section 212(i) do not have an impermissible retroactive effect, and that the new provisions apply retroactively to all pending cases.

The AAO additionally finds that counsel failed to demonstrate that the AAO misapplied legal precedent as set forth in the *Matter of Cervantes-Gonzalez* case, or that the AAO dismissed or diminished the applicant's wife's hardship factors or failed to consider hardship factors in the aggregate. As noted in the previous AAO decision, *Matter of Cervantes-Gonzalez*, supra, provided a general list of factors that the Board deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The previous April 8, 2003 AAO decision reflects that the AAO assessed each hardship factor in the applicant's case. The previous decision noted that there were no health concerns in the present case and that the applicant's wife was originally from Mexico and thus familiar with the language and culture of that country. The decision additionally noted that the record contained no information regarding the applicant's wife's family ties either inside the U.S. or in Mexico, and the decision noted that the internet articles submitted by the applicant regarding conditions in Mexico, failed to establish hardship conditions to the applicant's wife. In addition, the previous decision noted that no evidence was submitted to establish the household financial contributions made by the applicant, and that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The previous AAO decision noted further that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship, and that extreme hardship is defined as hardship that is unusual or beyond that which would normally be expected upon deportation, that emotional hardship caused by severing family and community ties is a common result of deportation, and that the uprooting of family represents the type of inconvenience and hardship experienced by the families of most aliens being deported. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA) 1996; and *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.

1991). Moreover, the previous AAO decision reflects that after reviewing, in its totality, the evidence and claims set forth by the applicant on appeal, the AAO determined that the applicant had failed to demonstrate that his wife would suffer hardship over and above the normal economic and social disruptions involved in the removal of a family member.

Accordingly, the AAO finds that counsel failed to identify any erroneous conclusion of law or statement of fact in his motion. The motion will therefore be dismissed.

ORDER: The appeal is dismissed and the previous AAO decision, dated April 8, 2003, will be affirmed.